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T.B., Appellant)	
)	
and)	Docket No. 11-913
)	Issued: October 24, 2011
U.S. POSTAL SERVICE, GENERAL MAIL)	
FACILITY, Albany, NY, Employer)	
)	

Case Submitted on the Record

Before:
 RICHARD J. DASCHBACH, Chief Judge
 MICHAEL E. GROOM, Alternate Judge
 JAMES A. HAYNES, Alternate Judge

On February 22, 2011 appellant filed a timely appeal from an August 31, 2010 merit decision of the Office of Workers' Compensation Programs (OWCP) and a January 24, 2011 OWCP decision that declined to review the merits of the claim. Pursuant to the Federal Employees' Compensation Act (FECA)¹ and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.

The issues are: (1) whether appellant has established an employment-related permanent impairment to a scheduled member or function of the body warranting a schedule award; and (2) whether OWCP properly determined appellant's application for reconsideration was insufficient to warrant review of the merits of the claim under 5 U.S.C. § 8128(a).

¹ 5 U.S.C. § 8101 *et seq.*

FACTUAL HISTORY

On October 30, 2007 appellant, then a 47-year-old clerk, filed an occupational disease claim (Form CA-2) alleging that she sustained carpal tunnel syndrome as a result of her federal employment. On the claim form she indicated that she was right-handed and used it constantly in such activities as tearing labels and lifting trays.

By decision dated June 11, 2008, OWCP accepted the claim for right carpal tunnel syndrome. Appellant underwent a right carpal tunnel release on November 14, 2008. On January 28, 2010 she submitted a claim for a schedule award.

In a treatment note dated January 5, 2010, Dr. Joseph Marotta, an orthopedic surgeon, stated that appellant still had some intermittent achiness around the carpal tunnel scar and some pins and needles sensation into the hypothenar area. He provided results on examination and stated that he would assign her a 15 percent loss of function of the right hand.

By letter dated March 4, 2010, OWCP advised appellant that medical evidence as to permanent impairment must be based on the sixth edition of the American Medical Association, *Guides to the Evaluation of Permanent Impairment*. Appellant submitted an August 4, 2010 report from Dr. William Grant, an internist, who stated that he did not see her in person, but interviewed her by telephone and read the records supplied by her representative. Dr. Grant did not identify the specific records reviewed. With respect to an entrapment/compression neuropathy impairment, he opined that appellant had a nine percent bilateral arm impairment pursuant to Table 15-23. Dr. Grant also found a 43 percent right arm impairment due to a Complex Regional Pain Syndrome.

In a decision dated August 31, 2010, OWCP determined that the medical evidence did not establish any employment-related permanent impairment. It noted that Dr. Grant had not examined appellant.

By letter dated September 26, 2010, appellant requested reconsideration of her claim. She stated that she was having difficulty finding a physician that would provide an opinion using the sixth edition of the A.M.A., *Guides*. Appellant stated that she would appreciate any help OWCP could offer.

In a decision dated January 24, 2011, OWCP denied the reconsideration request without review of the merits of the claim.² It found the reconsideration request was insufficient to warrant further review of the merits of the schedule award claim.

LEGAL PRECEDENT -- ISSUE 1

Section 8107 of FECA provides that, if there is permanent disability involving the loss or loss of use of a member or function of the body, the claimant is entitled to a schedule award for

² In using the term "merits" the Board is referring to the underlying substantive issue in the claim for compensation -- in this case the claim for a schedule award.

the permanent impairment of the scheduled member or function.³ Neither FECA nor the regulations specify the manner in which the percentage of impairment for a schedule award shall be determined. For consistent results and to ensure equal justice for all claimants OWCP has adopted the A.M.A., *Guides* as the uniform standard applicable to all claimants.⁴ For schedule awards after May 1, 2009, the impairment is evaluated under the sixth edition.⁵

ANALYSIS -- ISSUE 1

The record contains two medical reports with opinions regarding the issue of permanent impairment. Dr. Marotta stated in a January 5, 2010 note that he found a 15 percent loss of function, without further explanation. There is no complete history, detailed results based on physical examination or references to the A.M.A., *Guides*.⁶ The evidence from Dr. Marotta is therefore of diminished probative value to the issue presented.

Appellant also submitted an August 4, 2010 report from Dr. Grant, but he advised that he did not examine her but spoke with her by telephone. While Dr. Grant provided a rating of impairment, he clearly noted that he had not actually examined her. As the Board has held, a physician's opinion that is based solely on a telephone conversation with an employee has no probative value.⁷ Dr. Grant referred to having reviewed some medical records, but it is not clear what records he reviewed. The Board finds that he provided no basis for an opinion as to an employment-related permanent impairment and his report is of no probative value to the issue presented.

In the absence of probative medical evidence with respect to a permanent impairment to a scheduled member or function of the body under 5 U.S.C. § 8107, OWCP properly determined that appellant was not entitled to a schedule award in this case.

LEGAL PRECEDENT -- ISSUE 2

To require OWCP to reopen a case for merit review under section 8128(a) of FECA,⁸ its regulations provide that a claimant may obtain review of the merits of the claim by submitting a written application for reconsideration that sets forth arguments and contains evidence that either

³ 5 U.S.C. § 8107. This section enumerates specific members or functions of the body for which a schedule award is payable and the maximum number of weeks of compensation to be paid; additional members of the body are found at 20 C.F.R. § 10.404(a).

⁴ A. George Lampo, 45 ECAB 441 (1994).

⁵ FECA Bulletin No. 09-03 (March 15, 2009).

⁶ The medical evidence necessary to support a schedule award includes a physician's report that provides a detailed description of the impairment. *James E. Jenkins*, 39 ECAB 860 (1988); *T.S. Docket No. 10-2332* (issued July 6, 2011).

⁷ See *Dean E. Pierce*, 40 ECAB 1249 (1989); see also *Rose Marie Paszkiewicz*, 16 ECAB 223 (1964).

⁸ 5 U.S.C. § 8128(a) (providing that "[t]he Secretary of Labor may review an award for or against payment of compensation at any time on his own motion or on application)."

“(1) shows that OWCP erroneously applied or interpreted a specific point of law; (2) advances a relevant legal argument not previously considered by it; or (3) constitutes relevant and pertinent evidence not previously considered by OWCP.”⁹ Section 10.608(b) states that any application for review that does not meet at least one of the requirements listed in section 10.606(b)(2) will be denied by OWCP without review of the merits of the claim.¹⁰

ANALYSIS -- ISSUE 2

Appellant did not show that OWCP erroneously applied or interpreted a specific point of law or advance a relevant legal argument not previously considered by OWCP. She indicated that she was attempting to find a physician to provide an opinion as to a permanent impairment under the A.M.A., *Guides*. With respect to additional evidence, appellant did not submit any new medical evidence prior to the January 24, 2011 OWCP decision. The Board finds appellant did not meet any of the requirements of 20 C.F.R. § 10.606(b)(2).

On appeal, appellant submitted additional medical evidence and urged the Board to review the new evidence. The Board’s jurisdiction is limited to evidence that was before OWCP at the time of its final decision.¹¹ The Board cannot consider the new medical evidence submitted. Based on the evidence that was before OWCP, appellant did not establish entitlement to a schedule award and OWCP properly denied the application for reconsideration. She may send a request for a schedule award to OWCP based on new medical evidence upon return of the case record.

CONCLUSION

The Board finds that the medical evidence is not sufficient to establish entitlement to a schedule award under 5 U.S.C. § 8107. The Board further finds that OWCP properly denied the application for reconsideration without review of the merits of the schedule award claim.

⁹ 20 C.F.R. § 10.606(b)(2).

¹⁰ *Id.* at § 10.608(b); *see also* Norman W. Hanson, 45 ECAB 430 (1994).

¹¹ *Id.* at § 501.2(c)(1).

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs dated January 24, 2011 and August 31, 2010 are affirmed.

Issued: October 24, 2011
Washington, DC

Richard J. Daschbach, Chief Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board